

2013 DRAFTING REQUEST

Bill

Received: 4/2/2013 Received By: mduchek
 Wanted: As time permits Same as LRB: -2057
 For: Jim Ott (608) 266-0486 By/Representing: Jim Ott
 May Contact: Drafter: mduchek
 Subject: Occupational Reg. - misc Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Rep.OttJ@legis.wisconsin.gov
 Carbon copy (CC) to: michael.gallagher@legis.wi.gov

Pre Topic:

No specific pre topic given

Topic:

Changes to physician informed consent

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mduchek 4/3/2013						
/1		scalvin 4/3/2013	rschluet 4/3/2013		sbasford 4/3/2013	sbasford 4/3/2013	State S&L
/2					mbarman 4/3/2013	srose 4/3/2013	State S&L

email only

FE Sent For:

atwtr
4/5/13

<END>

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FE Sent For:

12 sac
04/03/2013

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1/?	mduchek	11 sac 04/03/2013	<i>[Signature]</i>	4/3			

FE Sent For:

<END>

Jacket
for
Assembly

Duchek, Michael

From: Mueller, Virginia
Sent: Tuesday, April 02, 2013 2:35 PM
To: Duchek, Michael
Cc: Jim Ott (votejimott@yahoo.com)
Subject: Rep. Jim Ott - Jandre

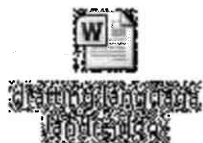
Importance: High

Michael,

Attached is the language Rep. Jim Ott would like to submit for the Jandre legislation. Rep. Ott will be contacting you shortly regarding language for the effective date. If you have any question please contact him on his cell phone at 1-414-758-9411.

Sincerely,

Ginger Mueller
Office Rep. Jim Ott
266-0486



448.30 ~~Information on alternative modes of treatment.~~ [Informed consent.] Any physician who treats a patient shall inform the patient about the availability of all reasonable alternative ~~viable~~ medical modes of treatment and about the benefits and risks of these treatments. The reasonable physician standard shall be the standard for informing the patient under this section. This standard requires disclosure only of information that a reasonable physician in the same or a similar medical specialty would know and disclose under the circumstances. The physician's duty to inform the patient under this section does not require disclosure of:

~~(1) Information beyond what a reasonably well qualified physician in a similar medical classification would know.~~ [Repealed]

(2) Detailed technical information that in all probability a patient would not understand.

(3) Risks apparent or known to the patient.

(4) Extremely remote possibilities that might falsely or detrimentally alarm the patient.

(5) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

(6) Information in cases where the patient is incapable of consenting.

(7) Information about alternative medical modes of treatment for conditions that the physician does not believe the patient has at the time the physician informs the patient.

4/2/13

Talked w Jim Ott. OK to have initial app
be for actions that accrue on effective date.

Discussed w/ Rep. Ott the possibility that
a distinction could be drawn between the
"reasonable physician" std. vs. what constitutes
a reasonable mode of treatment.

Concern was that didn't want to leave "alternate
medical modes of treatment" without a modifying
adjective and did not want "all."



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2058/1

MED:~)~:~:~

SAC

2013 BILL

NOW

1 AN ACT *gen cat*; relating to: the duty of physicians to inform patients of treatment
2 options.

Analysis by the Legislative Reference Bureau

Under Wisconsin's physician informed consent law, a physician who treats a patient has a duty to inform the patient about the availability of all alternate, viable medical modes of treatment and the benefits and risks of those treatments, subject to certain exceptions. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. The Wisconsin Supreme Court has employed a "reasonable patient standard" to determine whether a physician has fulfilled his or her duty. Under the reasonable patient standard, a physician must disclose information necessary for a reasonable person in the patient's position to make an intelligent decision with respect to the choices of treatment. The Wisconsin Supreme Court has also held that the duty to inform a patient about alternate modes of treating the patient's condition includes the duty to inform a patient about alternate modes of diagnosing the patient's condition.

This bill instead provides that any physician who treats a patient has a duty to inform the patient about the availability of reasonable alternate medical modes of treatment and the benefits and risks of those treatments, and provides that the "reasonable physician standard" is the standard for informing a patient under the physician informed consent law. The bill provides that the reasonable physician standard requires the disclosure only of information that a reasonable physician in the same or a similar medical specialty would know and disclose under the circumstances. The bill also provides that the physician's duty does not require the

BILL

disclosure of information about alternate medical modes of treatment for conditions that the physician does not believe the patient has at the time the physician informs the patient.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 448.30 (intro.) of the statutes is amended to read:

448.30 Information on alternate modes of treatment Informed consent. (intro.) Any physician who treats a patient shall inform the patient about the availability of all reasonable alternate, viable medical modes of treatment and about the benefits and risks of these treatments. The reasonable physician standard is the standard for informing a patient under this section. The reasonable physician standard requires disclosure only of information that a reasonable physician in the same or a similar medical specialty would know and disclose under the circumstances. The physician's duty to inform the patient under this section does not require disclosure of:

SECTION 2. 448.30 (1) of the statutes is repealed.

SECTION 3. 448.30 (7) of the statutes is created to read:

448.30 (7) Information about alternate medical modes of treatment for conditions that the physician does not believe the patient has at the time the physician informs the patient.

SECTION 4. Initial applicability.

(1) This act first applies to an action or special proceeding that accrues on the effective date of this subsection.

(END)



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2058/2
MED:sac:jf

Now
2013 BILL

Chapter 3

Regn

- 1 **AN ACT** *to repeal* 448.30 (1); *to amend* 448.30 (intro.); and *to create* 448.30 (7)
2 of the statutes; **relating to:** the duty of physicians to inform patients of
3 treatment options.

Analysis by the Legislative Reference Bureau

Under Wisconsin's physician informed consent law, a physician who treats a patient has a duty to inform the patient about the availability of all alternate, viable medical modes of treatment and the benefits and risks of those treatments, subject to certain exceptions. A physician who fails to so inform a patient about modes of treatment may be held civilly liable for damages under tort law. The Wisconsin Supreme Court has employed a "reasonable patient standard" to determine whether a physician has fulfilled his or her duty. Under the reasonable patient standard, a physician must disclose information necessary for a reasonable person in the patient's position to make an intelligent decision with respect to the choices of treatment. The Wisconsin Supreme Court has also held that the duty to inform a patient about alternate modes of treating the patient's condition includes the duty to inform a patient about alternate modes of diagnosing the patient's condition.

This bill instead provides that any physician who treats a patient has a duty to inform the patient about the availability of reasonable alternate medical modes of treatment and the benefits and risks of those treatments, and provides that the "reasonable physician standard" is the standard for informing a patient under the physician informed consent law. The bill provides that the reasonable physician standard requires the disclosure only of information that a reasonable physician in

BILL

the same or a similar medical specialty would know and disclose under the circumstances. The bill also provides that the physician's duty does not require the disclosure of information about alternate medical modes of treatment for conditions that the physician does not believe the patient has at the time the physician informs the patient.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 448.30 (intro.) of the statutes is amended to read:

2 **448.30 ~~Information on alternate modes of treatment~~ Informed**
3 **consent.** (intro.) Any physician who treats a patient shall inform the patient about
4 the availability of all reasonable alternate, viable medical modes of treatment and
5 about the benefits and risks of these treatments. The reasonable physician standard
6 is the standard for informing a patient under this section. The reasonable physician
7 standard requires disclosure only of information that a reasonable physician in the
8 same or a similar medical specialty would know and disclose under the
9 circumstances. The physician's duty to inform the patient under this section does not
10 require disclosure of:

11 **SECTION 2.** 448.30 (1) of the statutes is repealed.

12 **SECTION 3.** 448.30 (7) of the statutes is created to read:

13 **448.30 (7)** Information about alternate medical modes of treatment for
14 conditions that the physician does not believe the patient has at the time the
15 physician informs the patient.

16 **SECTION 4. Initial applicability.**

BILL

1 (1) This act first applies to an action or special proceeding that accrues on the
2 effective date of this subsection.

(END)

- ↳ a cause of action